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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,595	01/28/2002	Susan Flappan	2845	4083
27910	7590	03/23/2004	EXAMINER	
STINSON MORRISON HECKER LLP			CROSS, LATOYA I	
ATTN: PATENT GROUP			ART UNIT	
1201 WALNUT STREET, SUITE 2800			PAPER NUMBER	
KANSAS CITY, MO 64106-2150			1743	

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/058,595	<b>Applicant(s)</b> FLAPPAN, SUSAN	
	<b>Examiner</b> LaToya I. Cross	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 20, 2004 has been entered.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 33, 36-38, 42, 44, 45 and 62-64 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,447,463 to Borkowski.

Borkowski teaches a fungal infection diagnostic kit. The kit includes a translucent diagnostic slide having a retractable self-adhesive translucent tape thereon. The tape (2) has a window (3) that is “centrally” translucent providing a translucent window for collecting a fungus sample onto the translucent area of the tape as recited in claim 1 (col. 2, lines 24-26). The tape is affixed to a plastic slide (1) after trapping sample on the sticky side of the tape. At col. 4, lines 19-34, Borkowski teaches that fragments of tape may be used. After the sample is collected onto the tape, the tape is attached to the slide. Therefore, the tape need not be

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permanently attached to the slide. With regard to claims 4 and 5, a rectangular piece of glossy paper (6) is attached to the back of the adhesive tape. This rectangular paper serves as a tab to help the user in manipulating the sample and/or the slide. Figure 1 of Borkowski shows a kit box for storing the slide structure and transporting the sample back to the laboratory.

Regarding claims 6, 12 and 13, Borkowski teaches that the kit can include a data form to be completed by the user requesting information regarding the sample, conditions of the sample and other information (col. 4, lines 9-16). The test slide also contains a bar code (4, 5) or other identifier. In using the diagnostic kit of Borkowski, the user touches the contaminated area with the adhesive tape, preferably in the window portion, to lift off a sample of the contaminated area. The tape is then attached to the slide and sent to the laboratory for testing. The sample is stained and examined under a microscope by a technician. Results from the tests are reported back to the user. With respect to claim 32, Borkowski teaches a test tape having a translucent window area and a handling end (rectangular paper), which is adjacent the window area and is adhesive-free for easy manipulation of the test tape by the user.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(e) in view of the teachings of Borkowski.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 35 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkowski in view of US Patent 5,812,312 to Lorincz.

With respect to claims 3 and 15, Borkowski fails to teach using a grid over the window

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area.

Lorincz teaches a microscope slide has a test tape (16) for collecting a sample. The test tape includes a sizing grid (19) to serve as a reference for aiding in determining the size and quantity of sample. It would have been obvious to one of ordinary skill in the art to incorporate a grid onto test tape of Borkowski to aid the user in determining the size of the sample as well as in quantifying the sample. While Lorincz may not use the reference grid for the same reasons as Applicants, the rationale for modifying a reference need not be the same as Applicants. See MPEP 2144.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Borkowski and Lorincz.

5. Claims 34, 39-41, 43, 46 and 48-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkowski in view of US Patent 5,582,298 to Clayton et al.

With respect to the above-mentioned claims, Borkowski fails to teach 1) multiple test tapes and 2) a placard for attachment of the test slide.

With respect to the use of a plurality of test tapes, test kits are conventionally manufactured with several testing elements. Clayton et al teaches multiple tape areas (40) to allow for multiple samples to be collected and tested. It would have been obvious to modify Borkowski by including multiple test tapes so that multiple samples could be taken. In taken multiple samples, more tests could be run and thus, the likeliness of an accurate result increases.

With respect to the use of a placard, Clayton et al further teaches that the test tape samples are attached to an adhesive area (40) on a placard (ply 12). The test tapes are attached

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in the areas designated by indicia or lines of weakening. Instructions (70) are also formed on the placard.

It would have been obvious to one of ordinary skill in the art to use a placard to attach the samples of Borkowski because in using a placard, a means is provided for all of the samples to be gathered in a single organized place. This will allow for ease in collection and transport of the samples. The placard also provides a manner for sending the samples to the laboratory in an organized manner, which may reduce the likeliness of the samples being damaged or loss.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Borkowski and Clayton et al.

### *Response to Arguments*

6. Applicant's arguments filed February 20, 2004 have been fully considered but they are not persuasive. With respect to the Borkowski reference, Applicants argue 1) Borkowski does not teach that only the window area of the test tape is transparent, 2) the test tape of Borkowski is permanently affixed to the slide and 3) Borkowski does not teach collecting mold samples.

With respect to the window area being transparent, Borkowski teaches at col. 2, lines 24-26 that that the test tape is "centrally translucent". In considering this statement in conjunction with figures 2, 5 and 6, it seems apparent that only the window area of the test tape is translucent. Further, figures 5 and 6 show a sample being collected only in the centrally translucent area of the test tape.

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With respect to the test tape being permanently affixed to the slide, Borkowski teaches at col. 4, lines 19-34 that fragments of test tape may be used to collect a sample and the fragments are affixed to a slide. Thus, it appears that Borkowski envisioned tape that is affixed to the slide, as well as tape fragments that are not affixed to the slide and are placed on the slide after collecting the sample.

With respect to the sample taken being mold, Borkowski teaches collecting fungus samples. Since mold is a fungus, it would be inherent that mold samples can be collected as well. Applicants' use of the terms 'environmental sample' and 'environmental surface' is unclear and the terms are not defined in the claims or specification. Therefore, the terms have been interpreted reasonably broad. One of ordinary skill in the art would reasonably consider fungus to include mold.

Applicants' arguments regarding the Dimou patent and the use of placards are considered moot in view of the new grounds of rejections.

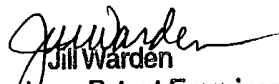
Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 22, 2004

  
Jill Warden  
Supervisory Patent Examiner  
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